

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERIC K. MERRING,

07 CV 10381 CLB

Plaintiffs,

ANSWER

- against -

THE TOWN OF TUXEDO, NEW YORK, THE TOWN
OF TUXEDO POLICE DEPARTMENT, TOWN OF
TUXEDO POLICE OFFICER ANTHONY DELIA,
SHIELD NUMBER 24, TOWN OF TUXEDO POLICE
SERGEANT PATRICK WELSH, SHIELD NUMBER 17,

Defendants.

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Defendants named herein as THE TOWN OF TUXEDO, NEW YORK, THE
TOWN OF TUXEDO POLICE DEPARTMENT, TOWN OF TUXEDO POLICE OFFICER
ANTHONY DELIA, SHIELD NUMBER 24, TOWN OF TUXEDO POLICE SARGEANT
PATRICK WELSH, SHIELD NUMBER 17, by its attorneys, **HODGES, WALSH &**
SLATER, LLP, as and for an Answer to plaintiffs' Complaint dated November 15, 2007,
allege upon information and belief as follows:

JURISDICTION AND VENUE

FIRST: Denies each and every allegation contained in paragraphs "1", "3"
and "4" of the Plaintiff's Complaint.

NATURE OF THE PROCEEDINGS

SECOND: Denies each and every allegation contained in paragraph "7" of the
Plaintiff's Complaint.

PARTIES

THIRD: Denies each and every allegation contained in paragraph "8" of

the Plaintiff's Complaint.

FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "10" of the Plaintiff's Complaint and refers all questions of law to this Court.

DUTIES

FIFTH: Denies each and every allegation contained in paragraphs "15" and "17" of the Plaintiff's Complaint and refers all questions of law to this Court.

SIXTH: Denies each and every allegation contained in paragraphs "16" and "19" of the Plaintiff's Complaint.

ALLEGATIONS:

SEVENTH: Denies each and every allegation contained in paragraphs "20", "21", "22", "23", "24", "26", "27", "28", "29", "30", "33", "34", "36", "37", "39", "40", "41" and "42" of the Plaintiff's Complaint.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "31" of the Plaintiff's Complaint.

ANSWERING THE ALLEGED FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

NINTH: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "45" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

TENTH: Denies each and every allegation contained in paragraphs "47", "48" and "49" of the Plaintiff's Complaint.

ANSWERING THE ALLEGED SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS:

ELEVENTH: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "49" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

TWELFTH: Denies each and every allegation contained in paragraphs "51", "52" and "53" of the Plaintiff's Complaint.

**ANSWERING THE ALLEGED THIRD CAUSE OF ACTION
AGAINST THE DEFENDANTS TOWN AND POLICE DEPARTMENT:**

THIRTEENTH: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "53" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

FOURTEENTH: Denies each and every allegation contained in paragraphs "55", "56", "57", "58", "59", "60" and "61" of the Plaintiff's Complaint.

**ANSWERING THE ALLEGED FOURTH CAUSE OF ACTION,
AGAINST DEFENDANTS DELIA and WELSH FOR
INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS:**

FIFTEENTH: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "61" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

SIXTEENTH: Denies each and every allegation contained in paragraphs "63" and "64" of the Plaintiff's Complaint.

**ANSWERING THE ALLEGED FIFTH CAUSE OF ACTION,
AGAINST DEFENDANTS TOWN AND POLICE DEPARTMENT:**

SEVENTEENTH: Defendants repeats and realleges each and

every denial set forth in paragraphs "1" through "64" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

EIGHTEENTH: Denies each and every allegation contained in paragraphs "67" and "68" of the Plaintiff's Complaint.

**ANSWERING THE ALLEGED SIXTH CAUSE OF ACTION,
AGAINST ALL DEFENDANTS FOR NEGLIGENT
INFILCTION OF EMOTIONAL DISTRESS**

NINETEENTH: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "68" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

TWENTIETH: Denies each and every allegation contained in paragraphs "70", "71", "72" and "73" of the Plaintiff's Complaint.

**ANSWERING THE ALLEGED SEVENTH CAUSE OF ACTION, AGAINST
DEFENDANTS TOWN AND POLICE DEPARTMENT FOR NEGLIGENCE:**

TWENTY-FIRST: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "73" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

TWENTY-SECOND: Denies each and every allegation contained in paragraphs "75", "76", "77", "78" and "79" of the Plaintiff's Complaint.

**ANSWERING THE ALLEGED EIGHTH CAUSE OF ACTION,
AGAINST DELIA AND WELSH;**

TWENTY-THIRD: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "79" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

TWENTY-FOURTH: Denies each and every allegation contained in paragraphs "81", "82", "83" and "84" of the Plaintiff's Complaint.

ANSWERING THE ALLEGED NINTH CAUSE OF ACTION FOR PUNITIVE DAMAGES AGAINST ALL DEFENDANTS:

TWENTY-FIFTH: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "84" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

TWENTY-SIXTH: Denies each and every allegation contained in paragraphs "86" and "87" of the Plaintiff's Complaint.

ANSWERING THE ALLEGED NINTH CAUSE OF ACTION FOR ATTORNEYS' FEES AGAINST ALL DEFENDANTS:

TWENTY-SEVENTH: Defendants repeats and realleges each and every denial set forth in paragraphs "1" through "87" of plaintiff's Complaint with the same force and effect as if fully set forth at length herein.

TWENTY-EIGHTH: Denies each and every allegation contained in paragraphs "89" of the Plaintiff's Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

TWENTY-NINTH: The plaintiff's claims are barred by the doctrine of collateral estoppel.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

THIRTIETH: The plaintiff's claims are barred by the doctrine of *res judicata*.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

THIRTY-FIRST: This court does not have subject matter jurisdiction over the plaintiff's claims by reason of the Younger and Rooker-Feldman abstention doctrines.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

THIRTY-SECOND: The defendants are entitled to qualified immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

THIRTY-THIRD: The defendants are entitled to absolute immunity.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

THIRTY-FOURTH: The defendants' conduct was based upon probable cause.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

THIRTY-FIFTH: The plaintiff's claim for punitive damages is barred by public policy and the laws of the State of New York.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

THIRTY-SIXTH: The defendants acted in good faith and without malice.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

THIRTY-SEVENTH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiff.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

THIRTY-EIGHTH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiff.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

THIRTY-NINTH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the improper and unlawful acts of the plaintiff.

WHEREFORE, the defendants, THE TOWN OF TUXEDO, NEW YORK, THE TOWN OF TUXEDO POLICE DEPARTMENT, TOWN OF TUXEDO POLICE OFFICER ANTHONY DELIA, SHIELD NUMBER 24, TOWN OF TUXEDO POLICE SARGEANT

PATRICK WELSH, SHIELD NUMBER 17, demands judgment against the plaintiff dismissing the Complaint.

Dated: White Plains, NY
December 26, 2007

Yours, etc.


JOHN J. WALSH
HODGES, WALSH & SLATER, LLP
Attorneys for Defendants
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TO: Lee David Klein, Esq. (LDK 2270)
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11 Market Street, Suite 204
Poughkeepsie, NY 12601

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

=====X
ERIC K. MERRING,

07 CV 10381 CLB

Plaintiffs,
- against -

NOTICE TO TAKE
DEPOSITION UPON
ORAL EXAMINATION

THE TOWN OF TUXEDO, NEW YORK, THE TOWN
OF TUXEDO POLICE DEPARTMENT, TOWN OF
TUXEDO POLICE OFFICER ANTHONY DELIA,
SHIELD NUMBER 24, TOWN OF TUXEDO POLICE
SERGEANT PATRICK WELSH, SHIELD NUMBER 17,

Defendants.

=====X
COUNSELORS:

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules the testimony, upon oral examination, of the plaintiff, **ERIK K. MERRING**, as adverse parties, will be taken before a Notary Public who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at the law office of HODGES, WALSH & SLATER, LLP on the **28th day of February, 2008**, at **10:00 a.m.** in the forenoon of that day with respect to evidence material and necessary in the defense of this action.

Dated: White Plains, NY
December 26, 2007

John J. Walsh
Yours, etc.

JOHN J. WALSH
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